



## Bureau of Economic Analysis

### 15 CFR Part 801

[Docket No. 220922-0196]

RIN 0691-AA93

## Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to set forth the reporting requirements for the 2022 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 survey is conducted every five years; the prior survey covered 2017. The benchmark survey covers the universe of foreign direct investment in the United States and is BEA's most detailed survey of such investment. For the 2022 BE-12 survey, BEA will make changes in data items collected, the design of the survey forms, and the reporting requirements for the survey to satisfy changing data needs and to improve data quality and the effectiveness and efficiency of data collection.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kirsten Brew, Chief, Multinational Operations Branch, Direct Investment Division (BE-49), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Road, Washington, DC 20233; phone (301) 278-9152; or via email at [Kirsten.Brew@bea.gov](mailto:Kirsten.Brew@bea.gov).

**SUPPLEMENTARY INFORMATION:** This final rule amends 15 CFR part 801 to set forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States. Under this final rule 15 CFR 801.10 is modified to clarify the timing of this

benchmark survey. The next BE-12 survey will apply to the 2022 fiscal reporting year, and will be conducted once every five years thereafter, for reporting years ending in 2 and 7.

BEA conducts the BE-12 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108).

The BE-12 survey covers the universe of foreign direct investment in the United States in terms of value and is BEA's most detailed survey of such investment. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the BE-12 survey is to obtain universe data on the financial and operating characteristics of U.S. affiliates and on positions and transactions between U.S. affiliates and their foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy. Such data are generally found in enterprise-level accounting records of respondent companies. These data are used to derive current universe estimates of direct investment from sample data collected in other BEA surveys in non-benchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions, international investment position, and national income and product accounts, and for annual estimates of the foreign direct investment position in the United States and of the activities of the U.S. affiliates of foreign companies.

### **Description of Changes**

The final rule amends the regulations (15 CFR part 801) and the survey forms for the BE-12 survey. These amendments include changes in data items collected, the design of the survey forms, and the reporting requirements for the survey.

BEA adds, deletes, and modifies some items on the BE-12 survey forms. The following items will be added to the BE-12 survey:

- (1) A question to collect the city of each foreign parent and ultimate beneficial owner (UBO) on all forms.
- (2) The balance sheet and income statement sections on the BE-12A form will be modified to separately collect the investment in, and income from, a) “unconsolidated U.S. affiliates” and b) “foreign entities,” which were previously collected as a combined total.
- (3) Supplemental sections A and B, which collect identification information on business enterprises owned by the U.S. affiliate, will be modified on all BE-12 forms to request more information on the reasons the U.S. business enterprises changed since the last report. This will include options for “newly acquired” or “newly established” if an enterprise is being reported on a supplement for the first time, and options to report U.S. business enterprises that had a name change, were sold, merged or liquidated. A follow-up question will be added requesting the date of the corporate change for new enterprises.
- (4) Questions will be added on the BE-12A form to collect sales data for certain service types where there is no clear link between the industry of sales and the type of services supplied. These service types are 1) intellectual property (IP) rights and 2) advertising.
- (5) Questions will be added to collect sales data on the BE-12A form related to the provision of selected services generally recognized as prevalent in the digital economy. These selected services are 1) cloud computing and data storage and 2) digital intermediation services. In addition, checkboxes will be added to the BE-12A for respondents to identify the percentage of their sales of services delivered remotely, sales of services that were digitally ordered, and sales of goods that were digitally ordered, along with checkboxes to identify if this information was sourced from their accounting records or from recall/general knowledge.

The final rule also eliminates the following items from the benchmark survey:

- (1) Expensed petroleum and mining expenditures from the BE-12A form.

(2) Commercial property from the state schedule of the BE-12A and BE-12B forms.

(3) Part III of the BE-12A and BE-12B forms, which collects information on investment and transactions between the U.S. affiliate and the affiliated foreign group, will be scaled back to include only the following items:

- (1) Foreign parent ownership and classification information
- (2) A question on reverse investment
- (3) Intercompany debt balances for U.S. affiliates with less than \$60 million in assets, sales, or net income.

The final rule will also modify the survey forms to improve question wording, layout, and instructions.

On July 1, 2022, BEA published a notice of proposed rulemaking that set forth revised reporting criteria for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States (87 FR 39411). No comments on the proposed rule were received.

#### **Executive Order 12866**

This final rule has been determined to be not significant for purposes of E.O. 12866.

#### **Executive Order 13132**

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

#### **Paperwork Reduction Act**

The collection of information in this final rule was submitted to the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA). OMB approved the information collection for the 2022 Benchmark Survey of Foreign Direct Investment in the United States under OMB control number 0608-0042.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information

subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

The BE-12 survey is expected to result in the filing of reports from approximately 26,400 U.S. affiliates. The respondent burden for this collection of information will vary from one company to another. The estimated average time per respondent is 10.5 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for this survey is estimated at 276,441 hours, compared to 249,625 hours for the previous (2017) benchmark survey. An increase in the number of foreign-owned companies accounts for nearly all of the increase in the estimated respondent burden, while the addition of new questions and the deletion of previous questions had a marginal impact on the estimated respondent burden.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via email at [Kirsten.Brew@bea.gov](mailto:Kirsten.Brew@bea.gov), and OMB, Office of Information and Regulatory Affairs (OIRA), Paperwork Reduction Project 0608-0042, Attention PRA Desk Officer for BEA, via email at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

### **Regulatory Flexibility Act**

The Chief Counsel for Regulation, Department of Commerce, certified at the proposed rule stage to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the certification or the economic impact of the rule. Therefore, a final regulatory flexibility analysis is not required and none has been prepared.

### **List of Subjects in 15 CFR Part 801**

Economic statistics, Foreign investment in the United States, International transactions, Multinational enterprises, Penalties, Reporting and recordkeeping requirements.

**Paul W. Farelo,**

*Associate Director of International Economics, Bureau of Economic Analysis.*

For reasons set forth in the preamble, BEA amends 15 CFR part 801 as follows:

**PART 801--SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT**

1. The authority citation for 15 CFR part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

2. Revise § 801.10 to read as follows:

**§ 801.10 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States.**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments accounting to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501-3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 and 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United

States, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA about reporting in this survey must respond in writing pursuant to this section. This may be accomplished by filing a properly completed BE-12 report (BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing).

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate (except certain private funds as described in paragraphs (b)(1) through (3) of this section), that is, for each U.S. business enterprise in which a foreign person (foreign parent) owned or controlled, directly or indirectly, 10 percent or more of the voting securities in an incorporated U.S. business enterprise, or an equivalent interest in an unincorporated U.S. business enterprise, at the end of the business enterprise's fiscal year that ended in the calendar year covered by the survey. Certain private funds are exempt from reporting on the BE-12 survey. If a U.S. business meets ALL of the following 3 criteria, it is not required to file any BE-12 report except to indicate exemption from the survey if contacted by BEA:

(1) The U.S. business enterprise is a private fund;

(2) The private fund does not own, directly or indirectly through another business enterprise, an "operating company" - i.e., a business enterprise that is not a private fund or a holding company - in which the foreign parent owns at least 10 percent of the voting interest; and

(3) If the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. "operating companies" between the foreign parent and the indirectly-owned private fund.

(c) *Forms to be filed.* (1) Form BE-12A must be completed by a U.S. affiliate that was majority-owned by one or more foreign parents (for purposes of this survey, a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the following three items for the U.S.

affiliate (not just the foreign parent's share) was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey:

- (i) Total assets (do not net out liabilities);
- (ii) Sales or gross operating revenues, excluding sales taxes; or
- (iii) Net income after provision for U.S. income taxes.

(2) Form BE-12B must be completed by:

(i) A majority-owned U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) but none of these items was greater than \$300 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(ii) A minority-owned U.S. affiliate (for purposes of this survey, a "minority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, any one of the three items listed in paragraph (c)(1) of this section (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey .

(3) Form BE-12C must be completed by a U.S. affiliate if, on a fully consolidated basis, or, in the case of real estate investment, on an aggregated basis, none of the three items listed in paragraph (c)(1) of this section for a U.S. affiliate (not just the foreign parent's share), was greater than \$60 million (positive or negative) at the end of, or for, its fiscal year that ended in the calendar year covered by the survey.

(4) Any U.S. person that is contacted by BEA concerning the BE-12 survey, but is not subject to the reporting requirements, must file a BE-12 Claim for Not Filing. The requirement in this paragraph (c)(4) is necessary to ensure compliance with reporting requirements and efficient



administration of the Act by eliminating unnecessary follow-up contact.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately on the same type of report that would have been required if the real estate holdings were aggregated.

(e) *Due date.* A fully completed and certified Form BE-12A, BE-12B, BE-12C, or BE-12 Claim for Not Filing is due to be filed with BEA not later than May 31 of the year after the year covered by the survey (or by June 30 for reporting companies that use BEA's eFile system).

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